MONTANA LEGISLATIVE HISTORY

Chapter 179 1999

Bill H _____ S 245 Original bill & history ✓ C

H. Committee on Business & Labor

Hearing Date(s) 3/10 ____C

_____ ____C

_____ ____C

_____ ____C

Date Out 3/10 ____C

S. Committee on Labor & Employment Relations

Hearing Date(s) 2/4 ____C

2/9 ____C

_____ ____C

_____ ____C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

5/04 Chapter Number Assigned
Chapter Number 537
Effective Date: 4/30/1999 - All Sections

SB 244 Introduced by Tester, et al. *LC0032 Drafter: Heiman*

Provide for a General Investment Tax Credit;...

1/20 Introduced and 1st Reading
1/20 Referred to Taxation
1/20 Fiscal Note Requested
1/27 Fiscal Note Received
1/29 Fiscal Note Printed
2/03 Hearing
3/08 Tabled in Committee
3/31 Missed Deadline for Revenue Bill Transmittal

SB 245 Introduced by Waterman *LC1371 Drafter: McClure*

Exempt from the State Minimum Wage and Overtime Laws an Employee Employed in Domestic Service Employment to Provide Live-in Home Companionship Services for Individuals Who, Because of Age or Infirmity, Are Unable to Care for Themselves;...

12/23	Fiscal Note Needed		
1/20	Introduced and 1st Reading		
1/20	Referred to Labor and Employment Relations		
1/20	Fiscal Note Requested		
1/26	Fiscal Note Received		
1/26	Fiscal Note Signed		
1/27	Fiscal Note Printed		
2/04	Hearing		
2/10	Committee Executive Action--Bill Passed as Amended	9	0
2/10	Committee Report--Bill Passed as Amended		
2/11	2nd Reading Passed	50	0
2/12	3rd Reading Passed	48	0
	Transmitted to House		
2/16	Referred to Business and Labor		
3/10	Hearing		
3/11	Committee Executive Action--Bill Concurred	18	0
3/11	Committee Report--Bill Concurred		
3/13	2nd Reading Concurred	93	3
3/15	3rd Reading Concurred	96	4
	Returned to Senate		
3/15	Sent to Enrolling		
3/16	Returned from Enrolling		
3/17	Signed by President		
3/18	Signed by Speaker		
3/19	Transmitted to Governor		
3/25	Signed by Governor		
3/27	Chapter Number Assigned		
	Chapter Number 179		
	Effective Date: 3/25/1999 - All Sections		

Senate BILL NO. 245

INTRODUCED BY Mignon Waters
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM THE STATE MINIMUM WAGE AND OVERTIME LAWS AN EMPLOYEE EMPLOYED IN DOMESTIC SERVICE EMPLOYMENT TO PROVIDE HOME COMPANIONSHIP SERVICES FOR INDIVIDUALS WHO, BECAUSE OF AGE OR INFIRMITY, ARE UNABLE TO CARE FOR THEMSELVES; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion

may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association;

(n) a direct seller as defined in 26 U.S.C. 3508;

(o) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(p) a person serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(q) an employee employed in domestic service employment to provide companionship services, as defined in 29 CFR 552.6, for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act (29 U.S.C. 213).

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions

of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, farm implements, or replacement parts if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles, implements, or replacement parts to wholesalers or ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not

less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive

representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(y) an employee of the consolidated legislative branch as provided in 5-2-503."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

FISCAL NOTE

Bill #: SB0245 **Title:** Adopt wage and hour exemption for home companions for elderly and disabled

Primary Sponsor: Mignon Waterman **Status:** As introduced

Mignon Waterman 1-26-99
Sponsor signature Date

Dave Lewis 1-26-99
Dave Lewis, Budget Director Date

Fiscal Summary

	FY2000 Difference	FY2001 Difference
Expenditures:	$0	$0
Revenue:	$0	$0
Net Impact on General Fund Balance:	**$0**	**$0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:
1. SB0245 has no fiscal impact.

SB 245

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 4, 1999 at 3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SJR 6, SB 271, SB 245, 1/26/1999
Executive Action: None.

{Tape : 1; Side : A; Approx. Time Counter : 1 - 45}

goods, to the cost of 30% to 35%. When we correct this situation with this legislation we will remove some of those problems. This will also end some of the welfare for the law profession in this field. It does not take away from the rights of the individual to seek recourse. This also regains our freedom of speech. He urged a 'do pass' on this bill and agrees with the amendment.

{Tape : 1; Side : B; Approx. Time Counter : 83 - 109}

HEARING ON SB 245

Sponsor: **SEN. MIGNON WATERMAN, SD 26, Helena**

Proponents: **Ralph Andrews, Representing Self**
Vicki LaFond Smith, Representing Self
Cindy Mercier, Representing Self
Erin White, Representing Self
Brett Spaulding, Representing Self
Mike Chaffin, CEO Ravalli Services Corporation
Alve Thomas, American Association of Retired People
Maggie Bullock, Department of Health & Human Services
John Andrew, Department of Labor & Industry
Wally Melcher, Developmental Disabilities Systematic Committee, (DDSAC)

Opponents: **None.**

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, Helena, opened by stating SB 245 is a request for an exemption from the state minimum wage and overtime laws for employees who are engaged in domestic service employment to provide health companionship individuals, who because of age or infirmity, are unable to care for themselves. The Federal Fair Labor Standards Act requires minimum wage and overtime pay exemptions for employees who provide companionship services. The eligibility exemptions is applicable only for employees who reside in the home with the person who is receiving the services. Companionship services do not include trained

personnel services such as services by Registered or Practical Nurses.

Proponents' Testimony:

Ralph Andrews, Representing Self, asked that the Committee pass this bill to help the handicapped.

Vicki LaFond Smith, Representing Self, stood in support of this bill. **EXHIBIT(12)**

Cindy Mercier & Carl Kershner, Representing Selves, supported this bill. ***(Mr. Kershner was handicapped so Ms. Mercier read his testimony).*** He said he would like to be able to pick out and buy my own clothing and would like to be able to cook what he wants. Also, he would like to be able to live with someone not so fussy. He didn't want to live alone and someday would like to get married. **Ms. Mercier** said as one of Carl's staff members she is asking for the passage of SB 245. She believes this will help Carl achieve his independence. He needs to be able to make his own personal choices which he can do every day.

Erin White, Representing Self, explained she is caring for Misty, a non-verbal, non-ambulatory woman. Misty has her own house but requires a companion. Her family has made it possible for Misty to stay in this house, however, these arrangements are coming to an end. **Ms. White** said she would like to become a companion and move in with Misty so Misty can have a family environment. Her husband was raised by his grandmother and has been in a wheel chair for ten years. He is well-aware of what is required for caring for someone in a wheel chair. Her daughter loves Misty and Misty has even become comfortable enough to let her ride on her lap. They enjoy doing things as a family and hope they can make her feel as welcome as her own children. Being a companion to Misty will allow **Ms. White** to be home with her children. Misty could provide them with a beautiful and comfortable, larger house and they could provide her with the warmth and love of a solid family environment. She encouraged the passage of SB 245.

Brett Spaulding, Representing Self, spoke in support of this companionship bill because it will enhance the lives of persons he serves. They could have more options available to them and, also, this bill could open up the long waiting list of persons

with developmental disabilities. Rather than live in group homes or institutions, they could live in good homes.

Mike Chaffin, CEO Ravalli Services Corporation, said this bill will enable them to have one more resource for options for people with disabilities to avoid more restrictive living arrangements. This would give them another tool to help these people to remain in their own homes and apartments, also to reside with their own families.

Alve Thomas, American Association of Retired People, (AARP), informed the Committee they are in favor of this bill and hope it is passed.

Maggie Bullock, Department of Health & Human Service, strongly urged the support of SB 271.

John Andrew, Department of Labor & Industry, stated as the Committee is aware of the minimum wage and overtime laws, there is a lot of amendments which have gone to overtime. One of the primary purposes for that is to make the state law consistent with the federal law. This bill accomplishes that. Also, over the years on an occasional basis they get a complaint which comes in from somebody who has gone to work in one of these homes on a 'hand shake' arrangement. There are no records nor formal employment status and somewhere along the line they are faced with a sudden claim for minimum wage and overtime over a two or three year time period. No one intended for it to happen, but it did. When the individual who has hired that person to help, this bill will alleviate that difficulty.

Wally Melcher, Developmental Disabilities Systematic Committee, (DDSAC), stated he believes this bill opens options for people with disabilities that move in the direction philosophies are trending these days. People should have their own homes and enjoy the comforts, securities and privacies. They simply need a little bit of help.

Opponents' Testimony:

None.

Questions from Committee Members and Responses:

CHAIRMAN KEATING asked if the folks which will benefit from this companionship are people who are living by themselves, and at some point if they have these services their independent living is extended and this keeps them from being institutionalized?

SEN. WATERMAN responded this is true. **Ralph Andrews** was placed in, what was then, the Boulder River Hospital when he was five years old and spent 50 years institutionalized. He goal has always been to have a place of his own. He struggled, not only in finding affordable housing which he now has in Red Lodge, but also somebody to support him and live with him. What he wants is a companion and this will allow him to live independently.

SEN. BILL WILSON asked if we intend to pay wages and, if so, what range? What is an ideal companion situation?

SEN. WATERMAN answered that depends upon the circumstances. The person will reach an arrangement with the companion to figure out what is affordable and what services they want, etc. This will be an exemption from Wage and Hour so someone cannot come back later to say they were there 24 hours per day and should be paid for that.

SEN. WILSON asked what type of profession or qualifications are required for the companion?

SEN. WATERMAN responded we are not talking about skilled nursing services. They will be people who will help with those daily living tasks, including dressing, bathing, cooking meals, just companionship. There is a limitation on what they can do, such as light housekeeping. They are not there as a cleaning service nor a registered nurse.

SEN. WILSON asked if this could be used to infringe or diminish wages paid to someone who typically already does this? Also, will we get caught in the crossfire by someone who already holds a job who lives with someone who is disabled?

John Andrew reported the people who are trained professionals are not going to be excluded. There is nothing technical about this

bill. The intention is there is some sort of arrangement with a payment made to the companion which doesn't have to be a minimum wage or overtime standard.

SEN. WILSON remarked he noticed in the title, "domestic service employment" and he thinks that is pretty broad.

Mr. Andrew explained the term "domestic service employment" has a particular meaning in the Fair Labor Standards Act which distinguishes it from companionship services. The domestic servant is the person who is hired as a housekeeper and that type of thing, and they would not be exempted but entitled to minimum wage. It is the true companion who would be exempted from both minimum wage and overtime.

CHAIRMAN KEATING mentioned on page 2, line 24, is the federal law that defines what is being dealt with and they will have copies of that during executive action on this bill.

Closing by Sponsor:

SEN. WATERMAN closed by explaining we used to have relatives and friends and neighbors who used to help these people out. As we have gotten into requirements for Wage and Hour, we have protected people to make sure no one takes advantage of them, but we have also left some individuals with the inability to get anyone to help them, forcing them into group homes and confined living. She urged a "do-pass" of **SB 271.**

ADJOURNMENT

Adjournment: 4:58 P.M.

SEN. TOM KEATING, Chairman

GILDA CLANCY, Secretary

TK/GC

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on February 9, 1999 at 3:18 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:
Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Vicki Cocchiarella (D)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Gilda Clancy, Committee Secretary
Eddye McClure, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 365, 2/2/1999; SB 305, 2/2/1999
Executive Action: SB 202, SB 218, SB 223, SJR 6, SB 229, SB 245, SB 242

SEN. THOMAS conveyed there has been some confusion about the working group from the prior session legislation. It is his understanding the School Board's Association does not agree that they were involved in that working group.

SEN. BARTLETT asked if they are denying that they had the opportunity to be involved?

SEN. THOMAS said he couldn't answer that question.

Substitute Motion: **SEN. WILSON** made a substitute motion that **SB 229 BE TABLED. Motion failed with SEN. BARTLETT and SEN. WILSON voting 'yes'.**

Vote: Motion that **SB 229 DO PASS AS AMENDED carried 7-2.**

EXECUTIVE ACTION ON SB 245

Motion: **SEN. KEENAN** moved that **SB 245 AND THE AMENDMENT DO PASS. EXHIBIT(5)**

Discussion: **SEN. COCCHIARELLA** voiced she felt the amendment is good but the bill scares her a lot. She has seen people who work in the home health provider care profession who are quite often uneducated, but sometimes not. Sometimes it is the only job they can get and in some cases she foresees these people being taken advantage of. She doesn't object to this concept but she doesn't want to see people who are already underpaid being taken advantage of by calling them a home companion.

Vote: Motion that **THE AMENDMENT BE ADOPTED carried unanimously.**

Discussion: **SEN. BARTLETT** asked **Eddye McClure** if she had a copy of the federal definition. **EXHIBIT(6)**

Vote: Motion that **SB 245 DO PASS AS AMENDED carried unanimously.**

EXECUTIVE ACTION ON SB 242

Discussion: **Eddye McClure** handed out amendments which the sponsor of the bill, **SEN. KEN MILLER** requested. **EXHIBIT(7)**

SENATE BILL NO. 245

INTRODUCED BY M. WATERMAN

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM THE STATE MINIMUM WAGE AND OVERTIME LAWS AN EMPLOYEE EMPLOYED IN DOMESTIC SERVICE EMPLOYMENT TO PROVIDE LIVE-IN HOME COMPANIONSHIP SERVICES FOR INDIVIDUALS WHO, BECAUSE OF AGE OR INFIRMITY, ARE UNABLE TO CARE FOR THEMSELVES; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

APPROVED BY COM ON LABOR
& EMPLOYMENT RELATIONS

SENATE BILL NO. 245

INTRODUCED BY M. WATERMAN

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING FROM THE STATE MINIMUM WAGE AND OVERTIME LAWS AN EMPLOYEE EMPLOYED IN DOMESTIC SERVICE EMPLOYMENT TO PROVIDE LIVE-IN HOME COMPANIONSHIP SERVICES FOR INDIVIDUALS WHO, BECAUSE OF AGE OR INFIRMITY, ARE UNABLE TO CARE FOR THEMSELVES; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion

may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association;

(n) a direct seller as defined in 26 U.S.C. 3508;

(o) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(p) a person serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(q) an employee employed in domestic service employment to provide LIVE-IN companionship services, as defined in 29 CFR 552.6, for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act (29 U.S.C. 213).

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions

of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, farm implements, or replacement parts if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles, implements, or replacement parts to wholesalers or ultimate purchasers;

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(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not

less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive

representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(y) an employee of the consolidated legislative branch as provided in 5-2-503."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN BRUCE SIMON**, on March 10, 1999 at 8:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Rep. Bruce Simon, Chairman (R)
Rep. Bob Pavlovich, Vice Chairman (D)
Rep. Paul Sliter, Vice Chairman (R)
Rep. Joe Barnett (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. David Ewer (D)
Rep. Carol C. Juneau (D)
Rep. Billie Krenzler (D)
Rep. Bob Lawson (R)
Rep. Gay Ann Masolo (R)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Carolyn Squires (D)
Rep. Jay Stovall (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)

Members Excused: None.

Members Absent: Rep. Rod Bitney (R)

Staff Present: Stephen Maly, Legislative Branch
Pati O'Reilly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 217, SB 229, SB 245, SB 305, SB 466 (3/3/99), 4/2/1999
Executive Action: SB 245, SB 466, SB 103, SB 272, SB 113

HEARING ON SB 245

Opening Statement by Sponsor: Senator Waterman, SD 26 introduced SB 245.
{Tape : 1; Side : A; Approx. Time Counter : 0 - 54}

Proponents' Testimony: Wally Melcher, Disability Community Services. EXHIBIT(1)
{Tape : 1; Side : A; Approx. Time Counter : 54 - 77}

Irene Thurer, Am. Assoc of Retired Persons.
{Tape : 1; Side : A; Approx. Time Counter : 77 - 81}

Susan Dowell, Ralph Andrews Trust
{Tape : 1; Side : A; Approx. Time Counter : 81 - 109}

Ralph Andrews, Disabled Person
{Tape : 1; Side : A; Approx. Time Counter : 109 - 141}

Jenni Hope, Immigration Program
{Tape : 1; Side : A; Approx. Time Counter : 141 - 166}

Vicki LaFond Smith, Helena EXHIBIT(2)
{Tape : 1; Side : A; Approx. Time Counter : 166 - 272}

Diane and Sara Saylor, Laurel, MT
{Tape : 1; Side : A; Approx. Time Counter : 272 - 307}

Chris Dalinsky, Disability Advocate
{Tape : 1; Side : A; Approx. Time Counter : 307 - 347}

John Andrew, Dept of Labor
{Tape : 1; Side : A; Approx. Time Counter : 347 - 361}

Maggie Bullock, Dept. of Health and Human Services
{Tape : 1; Side : A; Approx. Time Counter : 361 - 376}

Opponents' Testimony: None

Questions from Committee Members and Responses: Rep. Bookout, Ewer and Tuss question witnesses.
{Tape : 1; Side : A; Approx. Time Counter : 376 - 500}
{Tape : 1; Side : B; Approx. Time Counter : 0 - 23}

Closing by Sponsor: Senate Waterman closed SB 245.
{Tape : 1; Side : B; Approx. Time Counter : 23 - 45}

EXECUTIVE ACTION ON SB 245

Motion/Vote: REP. PAVLOVICH moved that **SB 245 BE CONCURRED IN.** Motion carried unanimously.
{Tape : 1; Side : B; Approx. Time Counter : 45 - 94}

HEARING ON SB 217

Opening Statement by Sponsor: Senator Miller, SD 11 introduced SB 217.
{Tape : 1; Side : B; Approx. Time Counter : 94 - 126}

Proponents' Testimony: Mark Makie, Apprentice and Training Div. MT Dept of Labor EXHIBIT(10)
{Tape : 1; Side : B; Approx. Time Counter : 126 - 186}

Opponents' Testimony: Keith Allen, International Brotherhood of Electrical Workers. EXHIBIT(3)
{Tape : 1; Side : B; Approx. Time Counter : 186 - 210}

Questions from Committee Members and Responses: Reps. Squires, Ewer, Krenzler, Tuss and Simons question witnesses.
{Tape : 1; Side : B; Approx. Time Counter : 210 - 500}

Closing by Sponsor: Senator Miller closed SB 217. Rep. Noenig to carry bill on house floor.
{Tape : 2; Side : A; Approx. Time Counter : 0 - 46}

HEARING ON SB 229

Opening Statement by Sponsor: Senator Thomas, SD 31 introduced SB 229.
{Tape : 2; Side : A; Approx. Time Counter : 46 - 140}

Proponents' Testimony: Lance Melton, Montana School Board Assn.EXHIBIT(5)
{Tape : 2; Side : A; Approx. Time Counter : 140 - 290}

Don Beaver, Big Sky Bus Lines. EXHIBIT(6)
{Tape : 2; Side : A; Approx. Time Counter : 290 - 310}

DATE 3/10/99
SB 245

NATIONAL ASSOCIATION OF PRIVATE RESIDENTIAL RESOURCES

FEDERAL EXEMPTION APPLIES TO EMPLOYEES WHO PROVIDE "COMPANIONSHIP SERVICES"

Section 13 (a) (15) of the Fair Labor Standards Act (FLSA) provides an exemption from federal minimum wage and overtime laws for "any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by the Secretary)." U.S. Department of Labor regulations implementing this provision of federal law are found at 29 Code of Federal Regulations (CFR) 552.6, 552.106 and 552.109.

As the disability field relies more on supported living services, this exemption is coming into greater use. It is important to note that not all state labor laws permit these exemptions, but where states require payment of their own minimum wage or overtime laws the state law may interface with federal law to reduce compensation requirements.

Companionship Services Defined by DOL

"Domestic service employment" refers, under Section 552.3, to "services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom he or she is employed." In addition to companions, employees who fall into this category include cooks, butlers, maids, housekeepers, nurses and the like. Only companions are exempt from the federal minimum wage and overtime requirements, however.

Section 552.6 defines the term "companionship services" as:

> (T)hose services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Such services may include household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work: Provided, however, that such work is incidental, i.e., does not exceed 20 percent of the total weekly hours worked. The term "companionship services" does not include services relating to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse. While such trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a private household.

EXHIBIT 2
DATE 3/10/99
SB 245

SB245
Hearing before House Business & Labor Committee
3/10/99, 8am, Room 104, State Capitol

Chairman and members of the Committee, my name is Vicki LaFond-Smith, and I live in the East Helena Valley. I am a proponent of SB 245.

I am 34 years old and have three children: twins, Christopher and Matthew are 8 years old and both are developmentally and physically disabled, and Timothy who is 3 years old. [SHOW PICTURES OF KIDS]. I am now divorced–me and the boys have been on our own for the last 1 ½ years. Christopher and Matthew are in 2nd Grade.

Christopher is physically disabled, he can crawl and sit up, but he can't functionally walk or stand. He is significantly paralyzed on his left side. He can communicate by making a few sounds like "da" for down; "ba" for bye; "ma" for more; he can say "Hi"; he can understand far more language than he can speak and sometimes it's amazing to me how he can get across what he wants–but most of the time it is challenging for him to get me to understand what he is trying to say. He can hear, but he is legally blind–he is very nearsighted. He eats and drinks through a g-tube rather than orally by mouth. He has a seizure disorder, but the seizures have been controlled by medications for about two years. He has hydrocephalus, and this condition is controlled because he has two shunts. He is cognitively at a level of about a two year old. He is incredibly engaging, loving and out-going. His favorites are Barney, Sesame Street, giving and receiving hugs, neck and back rubs, Grandpa Maynard and swinging.

Matthew is mildly physically disabled. He can walk, run, jump and especially dribble a ball. He has mild left side paralysis. He can also communicate by saying a handful of words and sounds and he understands far more language than he can speak, but most of the time–just as with Christopher--it is challenging for him to get across what he needs or wants. He can hear and has no vision problems. He has a healthy appetite and eats well. He has autistic-like tendencies. He is very active. He is cognitively at a level of about a two year old. He has a great smile and seems shy and conservative until he knows you better. He is sensitive. His favorites are swinging, playing with a piano and musical toys, turning the pages while reading a story, working on a computer, and hot-tubbing with Grandma Mary.

I want you to know I love my children with all my heart. I would do anything for my children. I seek out whatever assistance that is available for disabled children from agencies, educational programs, medical professionals–I am continually looking for ways to meet the needs of my disabled children. In the last 1 ½ years, I have come to realize that even though I love my children so much, and work so hard in caring for them myself, and gladly exhaust my energy each day to keep a clean, happy, loving and nurturing home–and even with support from Family Outreach--I haven't been enough to meet and maintain their level of need. I am only one pair of hands. Their father's involvement is minimal. I need more help at home. Matthew and Christopher need a companion.

What SB 245 provides fits my family. I have actually thought about this kind of an idea, someone living in our home, for a while now. We can make the room and accommodations for a companion. Believe me, I have looked into the options of a home-health aide, we don't need the level of care provided by an LPN or RN, keeping habilitation trainers and respite care providers is extremely difficult–I complete the training process, they work for a month or so then quit–the turnover has been incredible for us in the last three years. This cycle doesn't promote my value of "home" and I emphasize "**home**." Home needs to be a happy, secure and comfortable environment–where things are done in a "family's time" **not scheduled** by an "aide's time". For us, "home" has become a "revolving door". I have become frustrated, disappointed and discouraged because I can't find the help that I need to meet my family's needs. It doesn't seem like it should be so complicated and yet it is.

We don't need a nanny or a cook or a housekeeper. Matthew and Christopher need a companion. I need an extra pair of hands. I know my circumstances are different in that my disabled family members are young children–not teenagers, older adults or senior citizens. But that is what is so neat about this bill!! "Companionship" can meet the needs of a diverse group of disabled people and their families.

We have a home we'd love to share with a companion. Someone who **wants** to help out with getting ready for school, bath time, meal time, reading stories, dressing, pushing on the swing, go with us swimming and snow skiing, share in activities we love to do–someone who'll be a friend, stay with us, live with us, and be a part of our family.

I invite any of this Committee's membership out to our home to personally see what I'm trying to explain and meet my family, if it would help to understand how SB 245 would positively impact our lives.

Thank you for listening, thank you for caring, and thank you for the hard work that you do here serving on this Committee.

Sincerely,

Vicki LaFond-Smith

Vicki LaFond-Smith
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